



DEPARTMENT OF COMMERCE

Census Bureau

15 CFR Part 90

[Docket Number: 221116-0243]

RIN 0607-AA60

Resumption of the Population Estimates Challenge Program and Proposed Changes to the Program

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Bureau of the Census (Census Bureau) is proposing to amend the regulations for the Population Estimates Challenge Program which provides eligible general-purpose governmental entities (units) with the opportunity to file requests for the review of their population estimates for 2021 and subsequent years in forthcoming estimates series, beginning with the Vintage 2022 series that is scheduled to be published in 2023. Under this program, a governmental unit may file a challenge to its official population estimate by submitting additional data to the Census Bureau for evaluation, or by identifying a technical error in processing input data or producing the estimates. Specifically, the Census Bureau is proposing to amend its regulations to: update references to the input data used to produce the official population estimates and revise the evidence required to support a challenge.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments by email to POP.challenge@census.gov. You also may submit comments, identified by RIN number 0607-AA60, to the Federal e-Rulemaking Portal: <https://www.regulations.gov>. All comments received are a part of the public record. Comments will be posted to <https://www.regulations.gov> for

public viewing on a rolling basis. Comments generally will be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. The Census Bureau will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amel Toukabri, Chief, Local Government Estimates and Migration Processing Branch, Population Division, 301-763-2461 or POP.challenge@census.gov.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau typically releases annual population estimates, in accordance with Title 13 of the United States Code (U.S.C.). These estimates are typically based to some extent upon the most recent Decennial Census of Population and Housing and compiled from the most current administrative and survey data available for that purpose. Although not required by any statute, the Census Bureau also typically offers an opportunity for local units of general-purpose government (hereinafter collectively “governmental unit”) to challenge these official estimates through its Population Estimates Challenge Program. Under this program, a governmental unit may challenge its population estimate by submitting additional data to the Census Bureau for evaluation, or by identifying a technical error in processing input data or producing the estimates. If the additional data are accepted during the review period by the Census Bureau, resulting in an updated population estimate, the Census Bureau will provide a written notification to the governmental unit and publish the revised estimate at www.census.gov. If the additional data are not accepted for a revised estimate, the Census Bureau will notify the governmental unit. In the challenge process, the Census Bureau will only accept a challenge when the evidence provided indicates the use of incorrect data, processes, or calculations in the estimates.

In this proposed rule, the Census Bureau is proposing to amend its regulations to: (1) update references to the input data used to produce the official population estimates, and (2) revise the evidence required to support a challenge.

The Census Bureau is also soliciting comments from the public about any ways in which the program might be improved. In particular, the Census Bureau welcomes comments about (1) the methodology used in preparing the annual Population Estimates, (2) the sources of data that the agency considers (or does not consider) in preparing the annual Population Estimates, and (3) what sorts of factual or methodological arguments the agency considers (or does not consider) in evaluating a potential challenge.

Currently, the Census Bureau begins the process of preparing population estimates by updating population information from the most recent decennial census and other sources with information found in the annual administrative records of Federal and State Agencies. The Federal Agencies provide tax records, Medicare records, and some vital records and group quarters information. The State Agencies from the Federal-State Cooperative for Population Estimates (FSCPE), designated by their respective governors to work in cooperation with the Census Bureau's Population Estimates Program to produce population estimates, also supply vital statistics and information about group quarters like college dorms or prisons.¹ The Census Bureau combines census base data, administrative records, and selected survey data to produce current population estimates that usually begin with the last decennial census. Additionally, the Census Bureau's general-purpose governmental units' population estimates are provided to the FSCPE agencies in preliminary form for review and comment to resolve data processing issues identified during that period. For the purposes of this program, the District of Columbia is treated as a statistical equivalent of a county and, therefore, eligible to participate.

A major priority for the Census Bureau is balancing the need to use the 2020 Census counts at the lowest level of estimates geography as the starting point in estimates production

¹ <https://www.census.gov/programs-surveys/popest/about/fscpe.html>.

with the statutory obligation to protect the respondents’ confidentiality at every stage of the data lifecycle. Since the 1990 Census, the Bureau has added “noise”—or variations from the actual count—to the collected data to ensure privacy and confidentiality. For 2020 Census data, the Census Bureau applied noise using a newer disclosure avoidance framework based on “differential privacy”.² The Census Bureau uses a housing unit method to distribute a county population to places within its legal boundaries. The components in this method include housing units estimates, average household population per housing unit, and an estimate of the population in group quarters. The estimation formula was simplified to increase the accuracy of the estimates following the application of differential privacy as per the Census Bureau’s new disclosure avoidance framework: to minimize the impact of differential privacy on the population estimates, the Census Bureau reduced the number of components requiring privacy protection used to generate population estimates. Consequently, the occupancy rate and Persons Per Household (PPH) previously used in this method were replaced with the average household population per housing unit. The household population and the group quarters population used in the calculation of the estimate are the only two components subject to differential privacy protection compared to three components—occupancy rate, PPH, and group quarters population—that would have otherwise required privacy protection. Therefore, the PPH and occupancy rate components are no longer inputs used to produce those population estimates. The distributive housing unit equation used to calculate the population estimates for governmental units is simplified to accommodate the application of the disclosure avoidance technique prior to releasing the estimates. As a result, the Census Bureau is proposing to amend 15 CFR part 90 to revise: (1) references to the input data used to produce the official population estimates, (2) where to file a challenge and (3) the evidence required to support a challenge. These changes are captured in the proposed updates to §§ 90.2, 90.7, and 90.8.

²For more information about the differential privacy technique, visit [Understanding Differential Privacy](https://www.census.gov/understanding-differential-privacy) (census.gov).

The Census Bureau proposes no technical changes to its regulations except in the following sections:

Sections 90.2 and 90.7 - to ensure that the regulatory text more accurately describes how the Population Estimates Challenge Program has always functioned and is expected to function in the future. This proposed clarification does not reflect any operational changes.

Section 90.8 – to update the challengeable components of change.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis.

Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule will not have a significant impact on a substantial number of small entities.

Number of Small Entities

This proposed rule, if implemented, would impact only governmental units, some of which may be considered a small entity under the RFA. The RFA defines "small entity" as a small business, small organization, or small governmental jurisdiction. Specifically, the RFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. Using this criterion, the Census Bureau estimates that around 37,000 small governmental jurisdictions would be impacted by this

rulemaking.

Economic Impact

The Census Bureau does not anticipate any economic impact as a result of this proposed rule. This rulemaking intends to resume the implementation of the Population Estimates Challenge Program in 2023 to provide eligible entities the opportunity to file a challenge to population estimates for 2021 and subsequent years in forthcoming estimates series, beginning with the Vintage 2022 series that is scheduled to be published in 2023. There are no direct costs imposed on governmental entities (units) that wish to initiate a challenge under the Population Estimates Challenge Program.

Executive Orders

This rulemaking has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This notice of proposed rulemaking does not contain a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C., Chapter 35. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the Federal Register.

List of Subjects in 15 CFR Part 90

Administrative practice and procedure, Census data, Population census, Statistics.

For the reasons set forth in the preamble, Census Bureau proposes to amend 15 CFR part 90 as follows:

PART 90 -- PROCEDURE FOR CHALLENGING POPULATION ESTIMATES

1. The authority citation for part 90 continues to read as follows:

Authority: 13 U.S.C. 4 and 181.

2. Revise § 90.2 to read as follows:

§ 90.2 Policy of the Census Bureau.

It is the policy of the Census Bureau to provide the most accurate population estimates possible given the constraints of resources and available statistical techniques. It is also the policy of the Census Bureau, to the extent feasible, to provide governmental units the opportunity to seek a review of and provide additional data for these estimates and to present evidence relating to the accuracy of the estimates.

3. Revise § 90.7 to read as follows:

§ 90.7 Where to file a challenge.

A request for a population estimate challenge must be prepared in writing by the governmental unit and filed with the Chief, Population Division, Census Bureau by sending the request via email to POP.challenge@census.gov. The governmental unit must designate a contact person who can be reached by telephone or email during normal business hours should questions arise with regard to the submitted materials.

4. Amend § 90.8 by revising paragraphs (a), (c), and (d) to read as follows:

§ 90.8 Evidence required.

(a) The governmental unit shall provide whatever evidence it has relevant to the request at the time of filing. The Census Bureau may request further evidence when necessary. The evidence submitted must be consistent with the criteria, standards, and regular processes the Census Bureau employs to generate the population estimate. The Census Bureau challenge process cannot accept estimates developed from methods different from those used by the Census Bureau. The Census Bureau will only accept a challenge when the evidence provided indicates the use of incorrect data, processes, or calculations in the estimates.

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(c) For minor civil divisions and incorporated places, the Census Bureau uses a housing unit method to distribute a county population to places within its legal boundaries. The components in this method include housing units estimates, average household population per housing unit, and an estimate of the population in group quarters. The estimation formula was simplified to increase the accuracy of the estimates following the application of differential privacy as per the Census Bureau's new disclosure avoidance framework. As a result, the persons per household (PPH) and occupancy rate components were replaced with the average household population per housing unit. Consequently, the PPH and occupancy rate are no longer inputs used to produce those population estimates and are not eligible to be challenged. The Census Bureau will consider a challenge based on data related to changes in an area's housing stock, such as data on demolitions, condemned units, uninhabitable units, building permits, or mobile home placements or other housing inventory-based data deemed comparable by the Census Bureau. The Census Bureau will also consider a challenge based on additional information about the group quarters population in a locality.

(d) The Census Bureau will also provide a guide on its website as a reference for governmental units to use in developing their data as evidence to support a challenge to the population estimate. In addition, a governmental unit may address any additional questions by contacting the Census Bureau at 301-763-2461 or by sending emails to POP.challenge@census.gov.

Dated: November 17, 2022.

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